

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN THE MATTER OF:

KENNETH LEE LAWRENCE-BEY
Plaintiff

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C.A.No. 09-23 Erie

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

____ It is respectfully recommended that this case be dismissed due to Plaintiff's failure to prosecute.

II. REPORT

A. Relevant Procedural History

On February 4, 2009, Plaintiff, acting *pro se*, filed a one- page Notification of Default/Dishonor.

By Order dated February 12, 2009, this Court directed Plaintiff to file a complaint before March 3, 2009. Further, Plaintiff was directed to either pay the filing fee or file a motion for leave to proceed in forma pauperis. The Order warned that Plaintiff's failure to comply by March 3, 2009 would result in the dismissal of this action for failure to prosecute.

As of today's date, Plaintiff has failed to comply.

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Company, 747 F.2d 863 (3d Cir. 1984). The court must consider: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary

caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends the dismissal of this matter. Since the filing of this matter over a month ago, Plaintiff has taken none of the necessary first steps to prosecute this case. The case cannot proceed without a complaint. Further, Plaintiff has ignored repeated orders by this Court. Plaintiff is proceeding *pro se* and therefore bears all of the responsibility for any failure in the prosecution of his claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties. Although Plaintiff's allegations may state a claim upon which relief could be ultimately be granted, the merits of the claim are impossible to determine at this early stage of the proceedings.

III. CONCLUSION

For the foregoing reasons, it is respectfully recommended that this case be dismissed due to Plaintiff's failure to prosecute.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4 B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Failure to timely file objections may constitute a waiver of appellate rights. See Nara v. Frank, 488 F.3d 187 (3d Cir. 2007).

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
CHIEF UNITED STATES MAGISTRATE JUDGE

Dated: March 9, 2009